

NOT DESIGNATED FOR PUBLICATION

JOSEPHINE LINKER HART, JUDGE
DIVISION IV

RICK McDANIEL

CA06-1345

APPELLANT

June 6, 2007

V.

GEORGIA-PACIFIC CORP., Sedgwick James
Claims Management

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. E407881]

APPELLEES/CROSS-APPELLANTS

V.

Second Injury Trust Fund, Death and
Permanent Total Disability Trust Fund

REVERSED AND REMANDED ON
DIRECT AND CROSS APPEALS

APPELLEES

Appellant, Rick McDaniel, appeals from the decision of the Arkansas Workers' Compensation Commission, arguing that substantial evidence does not support the Commission's findings that he was not entitled to wage-loss benefits in addition to his anatomical impairment rating, that he was not permanently and totally disabled, and that appellee Second Injury Trust Fund was not liable for payment of wage-loss benefits. Cross-appellants, employer Georgia-Pacific Corporation and carrier Sedgwick James, also raise the latter issue on appeal. We reverse and remand.

On February 22, 1994, appellant suffered a compensable injury to his left shoulder when he fell from a ladder at work. Ultimately, appellant underwent surgery for a total shoulder replacement. Permanent partial disability benefits were accepted and paid to appellant for a

permanent physical impairment of eighteen percent to the body as a whole, and appellant was permanently restricted from lifting more than five pounds. The parties, however, litigated the issues of wage-loss disability benefits, permanent and total disability benefits, and the liability of the Second Injury Trust Fund.

With regard to wage-loss disability, the Commission concluded that appellant failed to prove by a preponderance of the evidence that his compensable shoulder injury was the major cause of his wage-loss disability. We consider here if the Commission's decision to deny wage-loss disability benefits was supported by substantial evidence. Ark. Code Ann. § 11-9-711(b)(4)(D) (Supp. 2005).

We recognize that “[p]ermanent benefits shall be awarded only upon a determination that the compensable injury was the major cause of the disability or impairment.” Ark. Code Ann. § 11-9-102(4)(F)(ii)(a) (Supp. 2005). Section 11-9-102, however, does not require a claimant to prove that his compensable injury was the major cause of his wage-loss disability with respect to Second Injury Trust Fund Liability. *Second Injury Fund v. Stephens*, 62 Ark. App. 255, 970 S.W.2d 331 (1998). Rather, “[i]n considering claims for permanent partial disability benefits in excess of the employee's percentage of permanent physical impairment, the Workers' Compensation Commission may take into account, in addition to the percentage of permanent physical impairment, such factors as the employee's age, education, work experience, and other matters reasonably expected to affect his or her future earning capacity.” Ark. Code Ann. § 11-9-522(b)(1) (Repl. 2002).

Here, as a result of his shoulder injury, appellant suffered a permanent disability of eighteen percent to the body as a whole that was accepted. It is further undisputed that appellant sustained a prior ten-percent anatomical impairment related to his left knee. The Commission, however, denied wage-loss disability benefits because it concluded that “the majority of claimant’s current disability stems from a variety of non-work related conditions,” focusing in part on two heart attacks that appellant suffered after his compensable injury. The Commission’s analysis, however, fails to consider whether appellant suffered some wage-loss disability in excess of his percentage of permanent physical impairment. That he may have suffered further health-related problems following his compensable injury does not diminish the possibility that he may have suffered a wage-loss disability, after considering matters reasonably expected to affect his future earning capacity. As noted by the Commission, appellant suffered from a previous compensable left knee injury, varicose veins and swelling in his right leg, high blood pressure, and other health issues that arose before his compensable injury. Furthermore, appellant, who was forty-nine years old at the time of the hearing and who was employed as a manual laborer, received a total shoulder replacement and is now limited to lifting five pounds. The Commission failed to consider whether these matters affected appellant’s future earning capacity and whether the Second Injury Trust Fund would be liable for payment of wage-loss benefits resulting from these matters. We conclude that, given appellant’s medical history and current restrictions, the Commission’s decision to deny wage-loss benefits was not supported by substantial evidence. We reverse and remand for

consideration of these wage-loss factors to determine the amount of appellant's entitlement to wage-loss disability benefits.

We recognize that appellant also challenges the Commission's finding that appellant was not permanently and totally disabled. When a claimant has been assigned an anatomical impairment rating to the body as a whole, the Commission has the authority to increase the disability rating, and it can find a claimant totally and permanently disabled based upon wage-loss factors. *Lee v. Alcoa Extrusion, Inc.*, 89 Ark. App. 228, 201 S.W.3d 449 (2005). Given that we are remanding to the Commission the issue of wage-loss disability benefits, this necessarily entails that its decision regarding permanent and total disability benefits be remanded as well.

The Commission also concluded that the Second Injury Trust Fund was not liable because appellant failed to prove that his disability or impairment combined with his recent compensable injury to produce his current disability status. The Second Injury Trust Fund is subject to liability if the employee suffered a compensable injury at his present place of employment; if prior to that injury, the employee had a permanent partial disability or impairment; and if the disability or impairment combined with the recent compensable injury to produce the current disability status. *Mid-State Constr. Co. v. Second Injury Fund*, 295 Ark. 1, 746 S.W.2d 539 (1988); Ark. Code Ann. § 11-9-525 (Repl. 2002). Here, appellant suffered a compensable injury to his shoulder and previously suffered from a prior permanent partial disability or impairment. Furthermore, a claimant does not have to prove that his

compensable injury was the major cause of his disability or impairment status that resulted from combining his last compensable injury and a prior disability or impairment. *Stephens, supra*. As we have concluded that appellant is entitled to wage-loss disability benefits, we remand this case to determine the Second Injury Trust Fund's liability for such benefits.

Reversed and remanded.

GLADWIN and ROBBINS, JJ., agree.